



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2004

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205

OR2004-6954

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207154.

The Bexar County Auditor's Office (the "county") received a request for specified cell phone records, the total number of county cell phone accounts, the total amount paid each month for county cell phone accounts, the total amount paid each month for the 460 county cell phone accounts assigned to "election staff", and a list of the top 50 county cell phone users. You state that you will release some responsive information to the requestor. You claim that the remaining requested information is not subject to the Public Information Act (the "Act") pursuant to section 552.003 of the Government Code. We have considered your arguments and reviewed the submitted information.

You claim that the submitted information constitutes judicial records that are not subject to the Act. We note that the Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). It does not apply to records of the judiciary. *See id.* § 552.003(1)(B). Information that is "collected, assembled or maintained by or for the judiciary" is not subject to the Act. *See id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("function

that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act.”).

You state that the submitted records are “the business records of the juvenile probation office, adult community supervision office, and certain District Judges and the District Court Administrator.” You state that Bexar County has contracted with a cellular service provider on behalf of the juvenile probation office, community supervision department, and the District Courts. You inform us that when the juvenile probation office and community supervision department provides probation services, they perform a judicial function. Furthermore, you assert that some of the requested information “relates to calls probation officers made regarding individuals on probation and their functions as probation officers.” You also state that the judges and their administrators “are performing judicial functions” and thus “the calls made by the District Judges and the District Court Administrator are records of the judiciary as well.” Finally, you state that the submitted cellular telephone records at issue are “subject to the direct supervision of the district court and are merely held by the [county] on behalf of the judiciary[.]”

Upon review, we conclude that to the extent the submitted information consists of phone records of members of the judiciary, it is not subject to the Act. *See* Open Records Decision Nos. 671 (2001), 646 at 5 (1996). Furthermore, to the extent the phone records of the juvenile probation and adult supervision officers reveals information directly related to a probationer, we find that these calls are also records of the judiciary and not subject to the Act. *See* Open Records Decision No. 646 (1996) (specific records held by community supervision and corrections department regarding individuals on probation and subject to direct supervision of court not subject to Act because such records held on behalf of judiciary). However, we note that the general administrative records of the probation and supervision officers are not considered records held on behalf of the judiciary. *Id.* at 5 (personnel records and other records reflecting day-to-day management decisions, are subject to Act). Thus, the general administrative records of the probation and supervision officers are subject to the Act.

To the extent the submitted information is subject to the Act, we note that it contains account numbers that are subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. You must withhold the account numbers pursuant to section 552.136.

In summary, judicial records are not subject to the Act. With the exception of account numbers that must be withheld pursuant to section 552.136, the general administrative records of the probation and supervision offices are subject to the Act, and thus must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 207154

Enc. Submitted documents

c: Mr. Ihosvani Rodriguez
San Antonio Express News
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(w/o enclosures)